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ABSTRACT

The first section of this policy paper provides an overview of the historical development of early retirement incentive programs (ERIPs), the legal status of ERIPs under the Age Discrimination in Employment Act (ADEA), cost/benefit analyses involving ERIPs, and consideration of ERIPs in Indiana. The second section contains a brief synopsis of state laws that pertain to teacher retirement systems and early retirement incentive programs. (Twenty-eight references are listed.) (SI)

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EARLY RETIREMENT INCENTIVE PROGRAMS FOR TEACHERS

Policy Issue Series No. 6 July 1988

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EARLY RETIREMENT INCENTIVE PROGRAMS FOR TEACHERS

Policy Issue Series No. 6 July 1988

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Executive Summary

During the 1970s school districts began to consider early retirement incentive programs (ERIPs) for teachers as a means to realize salary savings and ensure a healthy infusion of new teachers. Such incentive programs have since become an important subject of collective negotiations between teachers' organizations and school boards and are increasingly being implemented by local school districts. In addition, several states have adopted statewide early retirement incentives for teachers.

After briefly tracing the history of retirement incentives nationally, the first section of this paper examines legal challenges to ERIPs, cost/benefit analyses, and consideration of ERIPs in Indiana. Employees have based legal action primarily on the Age Discrimination in Employment Act of 1967 (ADEA), claiming that they were pressured to retire under the provisions of an ERIP or disadvantaged on the basis of age. Judicial interpretation of the ADEA and subsequent amendments have established that ERIPs must be voluntary and must not reduce normal retirement benefits based on age.

Cost/benefit analyses vary from state to state and district to district depending upon the financial conditions of the state retirement fund or district budget, the percentage of employee and employer contributions to the plan, the average age of teacher retirement with and without an incentive, and the assumptions taken into account when structuring an ERIP. Given that the early retirement incentive concept is of relatively

recent origin, the long-term costs and benefits have not yet been determined.

Although a proposal to lower the age of eligibility for teachers to receive retirement benefits was considered by the Indiana General Assembly in 1988, the bill was not passed. The financial feasibility of a statewide ERIP in Indiana is questionable since Indiana teachers already retire at an average age of 62 and the percentage of active teachers' salaries currently contributed to the retirement fund is only 3%. However, a study of three statewide ERIP proposals indicated that if Indiana pays off its past fiscal obligations to the retirement fund, raises the percentage of active teachers' salaries contributed to the fund, and gradually shifts the responsibility for retirement contributions from the state to local school corporations, then ERIPs could result in savings to the state.

The second section of the paper presents a summary of state laws that pertain to teacher retirement systems. Five states have statutes that allow local school districts to participate in state-structured ERIPs, and five other states have adopted statewide ERIP provisions. The remainder of the states do not provide early retirement incentives in their retirement systems that govern teachers, although early retirement (with reduced benefits) may be allowed. While state legislatures increasingly are considering ERIP proposals, additional research is needed on their fiscal impact as well as their impact on the composition of the teaching force and the quality of the public school program.

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EARLY RETIREMENT INCENTIVE PROGRAMS FOR TEACHERS

A school finance issue that has been discussed and debated at local bargaining tables and in state legislatures with increasing regularity during the 1980s is the relative benefits and costs of implementing early retirement incentive programs (ERIPs) for teachers. These programs involve cash bonuses, the availability of retirement benefits at a lower age, or other benefits (e.g., health insurance continuation after cessation of employment) that are offered by school districts to induce older teachers to retire voluntarily earlier than they would have retired in the absence of the incentives.

Despite their popularity, early retirement incentives for public educators have evoked controversies in judicial and legislative forums as well as at the bargaining table. From a teacher's perspective, the debate centers on whether early retirement programs provide welcome financial benefits and a means of enjoying a second career or whether the programs indicate a lack of respect for older, more experienced teachers and constitute an unwelcome push out of a longstanding career or unlawful discrimination based on age. Although early retirement may be a valued option for some teachers, others may believe that they are effectively being forced into early retirement with a "gilded shove" (Freund & Prager, 1987). Administrators, on the other hand, debate the potential fiscal and nonfiscal advantages and disadvantages for school districts implementing such programs.

The first section of this policy paper provides an overview of the historical development of ERIPs, the legal status of ERIPs under the Age Discrimination in Employment Act (ADEA),

cost/benefit studies involving ERIPs, and consideration of ERIPs in Indiana. The second section contains a brief synopsis of state laws that pertain to teacher retirement systems and early retirement incentive programs.

Section I

History and Proliferation of ERIPs

Programs providing early retirement incentives for teachers may be included in local collective bargaining agreements or built into a statewide teacher retirement system. The early retirement incentive concept is relatively new, although basic retirement benefits for teachers have been offered in the United States since the early 19th century (Wood, 1982). Whether part of a state employee plan or a specific plan for teachers, retirement benefits have been awarded upon the teacher reaching a specified age, such as 65.

In the latter part of the 20th century, school districts began to consider the possibility of early retirement incentives as a response to financial problems brought about by factors such as declining enrollments and budget constraints. It was believed that salary savings could be realized by inducing older and higher paid teachers to retire earlier than had been anticipated. Younger teachers on the lower end of the salary scale would be hired to replace the retirees. One of the first successful early retirement programs for public school teachers was implemented in the Pasadena, California Unified School District in 1972 (Johnson & Gaetino, 1982). The district realized a salary savings of approximately $250,000 during the first two years, and by the end

of this period, 18 more California school districts had implemented similar early retirement programs (Ridley, 1974).

Illustrative of the local ERIPs that began to appear across the nation was a program implemented in 1974 in the Newport, Rhode Island school system. The superintendent of schools proposed an early retirement incentive program as an alternative to teacher layoffs, which had become necessary due to declining enrollments. The program was accepted, and the approximate salary savings to the district were $19,500 per teacher or administrator participating in the program between 1973-1978. (This figure was based upon the cost of salaries and fringe benefits received by early retirees during the program and assumed replacement by teachers or administrators at the lowest level of the salary schedule; Trainor, 1978.)

By 1987 many local districts across the nation had implemented some type of ERIP. In Indiana, 37.2% of all school corporations offered ERIPs in 1986-87 as a result of local bargaining (L. T. Tiede, personal communication, April 19, 1988). In Illinois, 37.3% of the public school districts were implementing early retirement incentives in 1986-87 (Illinois State Board of Education, 1987). Additionally, a few states (i.e., Michigan, New Jersey, Tennessee, Pennsylvania, and Utah) have adopted statutes establishing statewide ERIPs for teachers, while several other states (i.e., California, Idaho, Kansas, Minnesota, and Ohio) have granted school districts such options as: (a) participating in a state program, (b) developing a local program structured within state guidelines, or (c) designing a

program tailored to local needs. State-structured plans usually entail the purchase of a designated amount of service (e.g., 5 years) so that younger employees can qualify for retirement benefits, a reduction in the age at which retirement benefits are available (e.g., from 65 to 60), or the provision of lump sum payments to teachers who retire early (e.g., at age 55). The various early retirement plan options being implemented by individual states are briefly described in Section II.

Although only a small number of states have implemented statewide retirement incentives, ERIPs are increasingly the subject of local collective bargaining. State pension plans are based upon state law and cannot specifically be the subject of collective bargaining, but teacher associations can negotiate supplements to state pension plans (Geiger, 1983). These supplements may take the form of local ERIPs that promote voluntary early retirement. Such local supplements in some states, however, must overcome the state retirement system's financial disincentives for retiring prior to the age of "normal" retirement (usually age 65). In Indiana, for instance, the higher a teacher's final average salary (FAS), years of service, and age at retirement, the higher his or her retirement benefits will be (Indiana State Teachers' Retirement Fund, 1986). In order to constitute an attractive alternative for teachers, a local ERIP must provide adequate compensation for the loss of higher state benefits that accompany retirement at the "normal" age or older.

Legal Implications

Most legal challenges to ERIPs and retirement plans in general have been based on the Age Discrimination in Employment Act of 1967 and its subsequent amendments (29 U.S.C. § 623 et seq.). For example, ADEA actions have been brought by employees who, after accepting the early retirement option, later claim that their decisions were involuntary and, therefore, in violation of the Act (e.g, Paolillo v. Dresser Industries, Inc., 1987). Similarly, employees who decline early retirement programs have brought suit for allegedly being punished by receiving lowered benefits (e.g., Karlen v. City Colleges of Chicago, 1988). Actions have also been brought by older employees who are ineligible to take advantage of the ERIP benefits and claim that this represents improper age discrimination (e.g., Cipriano v. Board of Education of North Tonawanda, 1986; Patterson v. Independent School District #709, 1984).

The ADEA provides: "It shall be unlawful for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age" (29 U.S.C. § 623(a)). The ADEA encompasses public schools because it is specifically applicable to "a state or political subdivision of a state and any agency or instrumentality of a state or a political subdivision of a state" (29 U.S.C. § 630).

As originally enacted, the ADEA protected the class of persons over the age of 40 and under the age of 65. In addition to certain narrowly tailored exceptions, Congress granted what

initially seemed to be a rather broad exemption from the prohibition of age discrimination by stipulating that:

> It shall not be unlawful for an employer to . . . observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter (emphasis added).
>
> (29 U.S.C.§ 623(f)(2))

The Supreme Court in United Airlines v. McMann (1977) upheld the involuntary retirement of employees prior to age 65 as falling within the ADEA exemption because the early retirements were based upon a bona fide retirement plan. The Court reasoned that the plan, enacted prior to the effective date of the ADEA, could not be a subterfuge to evade the purposes of the Act.

Partly in response to the McMann ruling, Congress amended the ADEA in 1978 to raise the upper limit of the protected category to age 70 and to proscribe involuntary retirements for all persons in the protected age group (40 to 70). The 1978 amendment added the following phrase to the exemption for bona fide benefits plans: "except that . . . no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual . . . because of the age of such individual." The addition of this phrase has clarified that involuntary retirements are unlawful even if they conform to the terms of a bona fide benefits plan under section 623(f)(2).

In 1986 the ADEA was again amended to remove completely any age ceiling effective January 1, 1987, thus prohibiting

involuntary retirement at any age with certain exceptions (bona fide executives or high policymakers; tenured employees of institutions of higher learning until December 31, 1993; and, with respect to hiring and discharge decisions, law enforcement officers and fire fighters employed by governmental entities). Exempted until January 1, 1990 were collectively bargained retirement plans (calling for retirement at 70) that were ratified before March 1, 1986.

In light of the recent amendments to the ADEA, ERIPs will be vulnerable to challenge if they pressure employees to retire by punishing those who remain in their jobs past a specified age. Recently, for instance, the Seventh Circuit Court of Appeals reversed a district court's summary judgment in favor of the employer, finding genuine factual issues with respect to whether the challenged provisions of an early retirement program fell under the ADEA's exemption for "bona fide employee benefit plans." In Karlen v. City Colleges of Chicago, three college professors challenged an early retirement program that provided for a decline in accumulated sick pay benefits and a loss of insurance benefits for faculty members who did not choose to retire by age 64. Recognizing that the treatment of ERIPs is the most troublesome question under the ADEA, the court noted that the Act protects workers from being punished for refusing early retirement. The court found that the early retirement program at issue was part of an overall bona fide retirement plan, but that the provisions of the program (eliminating certain benefits and reducing others based on age) may constitute a "subterfuge to

evade the purposes" of the ADEA. The case was remanded for a determination of the intent of the employer.

A fact of crucial significance in the Karlen case was that the employer did not argue that the challenged provisions varied employee benefits because of valid economic considerations. The court noted that employers may, when structuring an early retirement program, take into account a higher cost for older employees based on higher life insurance premiums for example. But where employers use age--not cost, years of service, or salary--as the basis for varying retirement benefits, they must be able to establish a close correlation between age and cost to satisfy the ADEA (Karlen v. City Colleges of Chicago, 1988).

In 1986 Congress passed another amendment to the ADEA. This most recent amendment became effective on January 1, 1988 and specifically prohibits the practice of reducing benefits annually or ceasing the accrual of benefits after employees attain a certain age as an inducement to retire. It stipulates:

> Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits (a) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or (b) in the case of a defined contribution, the cessation of allocations to an employee's account, or the reduction of

the rate at which amounts are allocated to an employee's account, because of age. (29 U.S.C. § 623(i)(1))

In a recent case, Bell v. Trustees of Purdue University (1987), the Seventh Circuit Court of Appeals addressed an ADEA claim by an employee who belonged to the Purdue University Retirement System. Under the system, the employer is precluded from contributing to the plan subsequent to the employee's attainment of age 65. The appeals court noted that it could not base its decision on subsection (i) of section 623 because the amendment applied only to benefit plan years beginning on or after January 1, 1988. The Purdue plan was, therefore, found to be valid under the ADEA as applied prior to 1988. Although a plan calling for the cessation of employer contributions after a specified age was upheld in Bell, it is apparent that the addition of subsection 623(i) to the ADEA will have a profound and adverse effect upon such plans in the future.

With the additional amendment to the ADEA, Congress has gone one step further towards eliminating discrimination against older employees who decline to retire. Such protections, however, do not mean that retirement programs must stop using age as a basis for calculating benefits. Employers may limit the total amount of benefits available under a given pension plan or limit the number of years that will be taken into account in determining benefits (29 U.S.C. § 623(i)(2)). In addition, as pointed out by Judge Posner in Karlen, employers may still charge older employees more for term insurance (or charge younger employees lower monthly premium amounts). However, any type of regular benefit plan

reduction, cessation, or penalty with regard to employment beyond "normal" retirement age will now be extremely suspect under section 623(i) of the ADEA.

Recent cases suggest that "positive" benefits awarded as incentives for early retirement (e.g., increased benefits or lump sum payments) are still valid under the ADEA and should not be affected adversely by the 1986 amendment (Henn v. National Geographic Society, 1987; Dorsch v. L. B. Foster Co., 1986). Also, the 1986 ADEA amendment specifically states: "A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals" (29 U.S.C. § 623(i)(6)). It would thus seem that even lump sum incentives that are reduced annually after the teacher reaches a certain age would be exempt from the new amendment as long as such bonuses are provided in addition to regular retirement benefits and are not part of the overall retirement plan, as in Karlen.

Besides meeting the statutory requirements under the ADEA, voluntariness will be a decisive factor in assessing the legitimacy of ERIPs. In determining voluntariness for purposes of the ADEA, courts will look at a number of questions including the following: (a) Did the person receive meaningful information concerning the consequences of a decision to retire early? (b) was the decision free from fraud or other misconduct? (c) did the person have an opportunity to say "no?" and (d) was an adequate period of time granted for contemplating the difficult decision to retire early? (Henn, 1987, p. 828; Paolillo, 1987,

p. 84). As long as ERIPs are clearly voluntary and do not interfere with normal retirement benefits, they should not be vulnerable to attack under the ADEA.

Cost/Benefit Analyses of ERIPs

Fiscal considerations are very important to policymakers who are assessing the advantages and disadvantages of ERIPs. Cost/benefit analyses will vary from state to state and from district to district depending upon a number of factors, including the financial condition of the state retirement fund or district budget, the percentage of employee and state contributions to the plan, and the average age of retirement with and without an incentive.

Also, the assumptions taken into account in structuring the ERIP will have an impact on forecasts of costs and benefits. For example, Ferguson (1982) contends that the perception of ERIPs as being beneficial to school personnel and financially advantageous to school districts is based upon five assumptions, four of which are incorrect. He asserts that the incorrect assumptions are the following: (a) School personnel will continue working up to and past age 65 in the absence of an early retirement incentive, (b) replacement of older staff with younger staff will increase productivity, (c) the least productive members of a school staff will be most likely to choose early retirement, and (d) schools will save money in the long run by replacing teachers at the top of the salary scale with teachers at the bottom of the salary scale. The single correct assumption, according to Ferguson, is that affirmative action programs will progress more quickly if

ERIPs are in place. Whenever a state or local school district embarks upon a cost/benefit analysis of implementing an ERIP, the assumptions that go into structuring the plan should be carefully studied.

A 1976 program of the Mason City, Iowa Community School District illustrates the assumptions generally made during the development of a local ERIP. In structuring the program, the school district conducted an economic impact assessment. The salary savings anticipated by the district between the 1976-77 school year and the 1980-81 school year were calculated at $327,275. The figure was based upon the following assumptions: (a) All retiring teachers would have remained in the classroom up to age 65 in the absence of the program, and (b) the retiring teachers would all be replaced by entry-level personnel (Clough, 1979, p. 3). Annual salary adjustments that would have taken place with respect to early retirees were not figured into the calculation, thus possibly giving a conservative estimate of savings. The Mason City plan has been considered a financial success and is still being implemented in roughly the same form during the 1987-88 school year, in which the district expects to realize a savings of approximately $181,148.

Obviously, certain assumptions will be necessary in any cost/benefit analysis of a newly proposed plan; however, the accuracy of such assumptions will vary from district to district. Incorrect assumptions may make programs appear to be cost-effective, while in the long run they are not. A careful and

fact-specific study of the accuracy of certain assumptions would greatly improve the chances of success in implementing an ERIP.

Consideration of ERIPs in Indiana

All legally qualified and regularly employed public school teachers in Indiana are required to become members of the Indiana State Teachers' Retirement Fund (ISTRF). This fund was created by the legislature in 1921 and comprises the only statewide retirement program for teachers. Members of ISTRF contribute 3% of their individual compensation to the fund (Teachers' Annuity). Retirement eligibility occurs at age 50 (with 15 or more years of service), but normal retirement benefits accrue at age 65 (with 10 or more years of service). As mentioned previously, retirement benefits are based upon a calculation that has a built-in disincentive for early retirement. In other words, benefits increase with more years of service, higher age, and higher final average salary (ISTRF Members Handbook, 1986).

The benefits for Indiana teachers who desire to retire "early" (prior to the age of 65) are diminished by reduction factors that increase in proportion to the years of age under 65. Indiana teachers have historically retired at an average age of 62, and about 75% have retired before the age of 65. Thus, the reduction factors built into the state system have not discouraged early retirement to a great extent (L. T. Tiede, personal communication, October 1, 1987). This fact supports the view that a statewide ERIP in Indiana, based on alleviating the reduction factors or economic disincentives to early retirement in the state fund, may not be cost effective for the state. While a

statewide ERIP would force the state to pay additional revenues to retirees, the evidence demonstrates that many teachers are retiring prior to the age of 65 regardless of such additional incentives.

In 1978 Gerald Montgomery conducted a fiscal feasibility study of the adoption of a statewide ERIP in Indiana by analyzing the financial effects of three possible ERIPs upon both the state and local districts. The three ERIPs entailed: (a) eliminating the reduction in benefits for early retirement, (b) providing a lump sum incentive for early retirement to minimize employees' loss of social security contributions by employers, and (c) paying stipends to teachers who choose to retire early and serve as part-time "consultants." Montgomery concluded that each of the plans would result in higher costs for the state if the current method of financing teacher retirement (appropriating funds to pay retirement benefits) is maintained. However, the study found that should Indiana pay off the past fiscal obligations to the retirement fund and finance a statewide ERIP in an actuarially sound manner (with a higher percentage of active teachers' salaries contributed to the retirement fund), all three ERIP options would result in savings to the state. In order to make the teacher retirement fund actuarially sound, Montgomery recommended that the state should gradually shift the responsibility of retirement contributions to local school corporations.

In addition to the questionable financial feasibility of a statewide ERIP in Indiana, the possibility of a nationwide teacher

shortage may also influence the development of retirement incentives. As pointed out by a director of personnel for one Indiana school corporation that has implemented an ERIP, it is ironic for districts to encourage early retirements of teachers for short-term financial reasons in the face of widespread predictions of teacher shortages (D. Fleenor, personal communication, October 17, 1987). In fact, there have been estimates that 1.3 million new teachers will be needed in the U.S. between 1986 and 1992 and that by 1991, the supply of new teachers will be only 68% of the demand (National School Boards Association, 1987).

Although such evidence suggests that it might be unwise to implement ERIPs, these plans have become permanent fixtures in the bargaining process in local school districts in Indiana. The local plans are separate from the state pension plan and are a part of the salary and fringe benefit policies determined by individual school districts. The state of Indiana does not receive any of the savings realized at the local level even though the local plans necessarily utilize state funds to some extent. The salary savings, if substantial in the long run as well as the short run, could provide an incentive for the state to devise a statewide ERIP with a mechanism for the state to realize a portion of the local savings. However, such conclusive fiscal data are not yet available.

Nonetheless, teachers' organizations will continue to press for various incentives for early retirement. Considered, but not passed by the 1988 General Assembly, was an amendment to Indiana

Code Section 21-6.1-5-7 that would have lowered the normal retirement age for Indiana teachers from 65 years of age and 10 years of service to either 60 years of age and 20 years of service or 55 years of age and 30 years of service. Although this proposed amendment did not deal specifically with a statewide ERIP, the lowering of "normal" retirement eligibility age would have amounted to an incentive to retire early.

The Indiana State Teachers Association (ISTA) has endorsed the lowering of "normal" retirement age to a "Rule of 85" (combined age and service credit totaling 85). According to ISTA, such a change would result in savings to the state of Indiana of approximately $38,008,576.00 or $7,249.39 per eligible teacher (ISTA Advocate, 1988). However, when the General Assembly debated lowering the retirement age for teachers, concerns were raised that the major savings would be realized by local school districts rather than the state and that a fiscal strain would be placed on the state teachers' retirement fund. One proposal to ensure the fund's solvency was to impose a 1% payroll tax on all active teachers and earmark such revenue for the teachers' retirement fund.

Although the proposal to lower the normal retirement age for Indiana teachers was rejected, the General Assembly enacted legislation to conform the Indiana State Teachers' Retirement Fund (ISTRF) and the Public Employee Retirement Fund (PERF) to the ADEA. Senate Enrolled Act No. 300 (I.C. 5-10.3-7-1) prohibits mandatory retirement ages for ISTRF members employed in public schools and otherwise conforms the Indiana retirement fund to the

most recent amendments to the ADEA by making minor technical corrections. Also passed was House Enrolled Act No. 1247 (I.C. 5-10.2-5-17), changing the basis for computing teacher retirement benefits to a member's years of service before age 75, rather than age 70. This law also provides for pension amount increases for certain members of the teacher retirement fund who had retired in prior years (with the largest increase of 3% going to members who retired before July 2, 1970). The normal retirement age of 65 has remained intact.

Summary

Early retirement incentive programs for teachers have received substantial attention in recent years at both the local and state levels. The increased interest in developing such incentives is attributable to a number of factors. With an aging teaching force, teachers' organizations have made retirement concerns a priority on their agendas. Because the ADEA has eliminated mandatory retirement at a specified age, retirement incentives also have assumed greater significance from the employer's standpoint. Although many questions regarding the costs/benefits of ERIPs remain unanswered, local school boards hope that retirement incentives might result in salary savings and a healthy infusion of younger and possibly more effective teachers.

Paralleling the rise in retirement incentive programs over the last decade has been an increase in discrimination suits brought under the ADEA. Whether an incentive program is structured according to state statute or bargained into existence

at the local level, it must be voluntary and not a ploy to discriminate against older employees. To satisfy the ADEA, retirement benefits cannot be reduced for teachers who elect to retire after a specified age. In essence, teachers cannot be pressured to retire; employers are expected to use statutory dismissal procedures, rather than "selective" application of retirement incentives, to discharge incompetent teachers. It is permissible under the ADEA, however, to provide a lump sum (in addition to regular benefits) to teachers who retire before a certain age or to reduce the "normal" retirement age so that employees can avoid reductions in benefits for early retirement.

In spite of recent legislative attention given to retirement incentives for educators, ERIPs have not yet been studied enough for any of the participants in the debate to draw general conclusions concerning the attitudes of teachers or the long range costs/benefits. A need exists for comprehensive research on the financial impact of ERIPs on states, local school districts, and individuals as well as the impact of such incentives on the composition of the teaching force and the overall quality of the public school program.

Section II

Overview of State Statutes Pertaining to Teacher Retirement Programs

This section deals with the teacher retirement statutory provisions in the 50 states. The states are grouped in three categories: (a) those with specific teacher retirement systems but no specific legislative ERIP provisions, (b) those with

general state employee retirement systems (including teachers) but no specific legislative ERIP provisions, and (c) those with express statutory provisions for ERIPs. The latter group is subdivided into those states granting an option to local districts who wish to implement an ERIP and those states with provisions for a statewide ERIP, available to all public school teachers.

Although an attempt was made to provide the most current statutory information available, it must be noted that some states may have considered or passed legislation that was not reported in state code supplements by February, 1988. The latest supplements to state legislative codes should be consulted to ensure that the code sections listed have not been superseded.

1. **States with teacher retirement provisions that provide no incentives for early retirement**

Alabama:

Alabama Statutes Annotated Sections 16-25-1 et seq. (1987) establish the "Teachers' Retirement System" with benefits available for teachers who retire at or over 60 years of age or who have 30 or more years of service credit.

Alaska:

Alaska Code Sections 14.25.010 et seq. (1987) establish the "Alaska Teachers' Retirement System" and provide for normal retirement benefits beginning at age 55 with the possibility of early retirement at age 50 for eligible members (e.g., those teachers who have 8 years of service). Benefits are reduced for early retirement.

Arkansas:

Arkansas Code of 1987 Annotated Section 24-7-201 establishes the "Arkansas Teacher Retirement System" and provides for normal retirement at age 60 with 10 years of service or at any age with 30 years of service. Section 24-7-702 allows early retirement for teachers under 60 years of age who have at least 25 years of service credit; however, the benefits are reduced under such an option. Section 24-7-703 ends benefit accrual upon a teacher attaining age 72. The legality of this last provision is now

highly suspect following the most recent amendment to the ADEA (Section 623(i) of the ADEA discussed in Section I of this paper).

Connecticut:

Connecticut General Statutes Annotated Sections 10-183(b) et seq. (1987) establish the "Connecticut Teachers' Retirement System." Normal retirement occurs at age 60 with 20 years of service or any age with 35 years of service. Early retirement is allowed at age 55 with 20 years of service or at any age with 25 years of service. Section 10-183(g) reduces benefits for early retirement.

Delaware:

Delaware Code Annotated Section 14:3901 (1986) establishes the "Teachers' Retirement and Disability Pension" with normal retirement allowed at age 65 with 15 years of service or at any age with 25 years of service.

Florida:

Florida statutes Annotated Section 238.01 (1987) establishes the "Teachers' Retirement System." Section 238.07 reduces benefits for retiring prior to age 62, although early retirement is allowed at age 55 with 10 years of service.

Georgia:

Official Code of Georgia Annotated Section 47-3-20 (1987) establishes the "Teachers' Retirement System of Georgia." Section 47-3-120 reduces benefits for retirement prior to age 62 with 30 years of service. Local districts may set up their own retirement funds, thus excluding their employees from participation in the state system.

Illinois:

Illinois Annotated Statutes Section 16-101 (1987) establishes the "Teachers' Retirement System of the State of Illinois." Normal retirement age is 62 with 5 years of service, 60 with 10 years of service or 55 with 20 years of service. Section 16-133 (B) allows for early retirement with reduced benefits prior to age 60 or at any age with 35 years of service.

Indiana:

Annotated Indiana Code Section 21-6.1-2-1 (1986) establishes the "Indiana State Teachers' Retirement Fund," and section 5-10.2-4-4 provides benefits for retirement at age 65 with 10 years of service. Reductions for early retirement are built into benefit calculations by section 5-10.2-4-1, which allows early retirement at age 50 with 15 years of service. Section 5-10.2-4-5 provides the formula for determining the reduction in benefits.

Kentucky:

Kentucky Revised Statutes Section 161.230 (1986) establishes the "Teachers' Retirement System of the State of Kentucky." Retirement benefits are awarded to persons who apply after attaining the age of 55 with 5 years of service or any age with 30 years of service. Section 161.600 reduces benefits for retiring prior to age 60.

Louisiana:

Louisiana Statutes Annotated Sections 17:571 et seq. (1987) establish the "State Teachers' Retirement System of Louisiana." Normal retirement benefits accrue at age 60 with 10 years of service or at any age with 20 years of service. Benefits are reduced for retiring under the age of 60.

Maryland:

Annotated Code of Maryland Art. 73B, Sections 81 et seq. (1987) establish the "Teachers' Retirement System of the State of Maryland." Normal retirement benefits accrue at age 60 with 25 years of service. Early retirement, prior to age 60, is allowed with a reduction in benefits.

Missouri:

Missouri Revised Statutes Section 169.020 (1987) creates "The Public School Retirement System of Missouri." Normal retirement benefits are available at the age of 60 with 5 years of service or at any age with 30 years of service.

Montana:

Montana Code Annotated Section 19-4-102 (1987) establishes "The Teachers' Retirement System of the State of Montana," while Section 19-4-802 reduces the benefits for early retirement. Normal retirement occurs at age 60 with 5 years of service credit or at any age with 25 years of service credit. Early retirement is allowed after the age of 50 and before the age of 60.

Nebraska:

Revised Statutes of Nebraska 1943, Sections 79-1501 (1987) et seq. establish the provisions for the Nebraska "School Retirement System" which does not provide for early retirement. Normal retirement may occur after 35 years of service credit at any age.

New Mexico:

New Mexico Statutes 1978 Section 22-11-1 (1986) establishes the "Educational Retirement Act," and Section 22-11-23 provides for a reduction in benefits for retirement prior to the normal retirement age of 60.

New York:

Consolidated Laws of New York Annotated Section 16:502 (1988) establishes the "New York State Teachers' Retirement System." Normal retirement occurs at age 60 with 25 years of service credit or at any age with 35 years of service credit. Section 16:535 provides for early retirement, with reduced benefits, at age 55 with 10 years of service.

North Dakota:

North Dakota Century Code Section 15-39.1 (1987) establishes the "Teachers' Fund For Retirement" and provides for reduction in benefits for retiring prior to the normal retirement age of either 65 with 5 years of service credit or a sum of age and years of service equaling 90.

Oklahoma:

Oklahoma Statutes Annotated Sections 17-101 et seq. (1988) establish the "Teachers' Retirement System of Oklahoma." Normal retirement age is either 55, any age with 30 years of service, or a sum of age and years of service equaling 80.

Oregon:

Oregon Revised Statutes Annotated Sections 239.002 et seq. (1987) provide for the administration of the "Teachers' Retirement Act," and Section 239.201 creates the "Teacher Retirement System." Normal retirement occurs at age 55 with 30 or more years of service or at age 58 regardless of length of service. Section 239.217 allows for retirement at age 55 with reduced benefits.

Texas:

Revised Civil Statutes of Texas, Title 110B, Sections 31.001 et seq. (1987) establish the "Teacher Retirement System of Texas." Normal retirement benefits are available upon a teacher reaching age 65 with 10 or more years of service, age 60 with 20 or more years of service, or at a sum of age and service equaling 95. Early retirement with reduced benefits is allowed at age 55 with 10 or more years of service or at any age with 30 or more years of service.

Vermont:

Vermont Statutes Annotated Sections 1932 et seq. (1987) establish the "State Teachers' Retirement System of Vermont." Normal retirement age is 62 with 10 years of service for teachers hired after 1981 and age 60 with 30 years of service for teachers hired before 1981. Section 1937 reduces benefits for early retirement.

Washington:

Revised Code of Washington Annotated Sections 41.32.005 et seq. (1987) establish the "Washington State Teachers' Retirement System." Normal retirement age is 60, any age with 30 years of service, or 55 with 25 years of service for teachers employed before October 1, 1977. For teachers hired thereafter, normal retirement age is 65 with 5 years of service. Early retirement is allowed at age 55 with 25 years of service. Benefits are reduced for early retirement.

West Virginia:

West Virginia Code Annotated Sections 18-7A-1 et seq. (1987) establish the "State Teachers Retirement System." Normal retirement age is 65, any age with 35 years of service, or 55 with 30 years of service. Early retirement is allowed under age 55 with at least 30 years of service (but less than 35 years of service). Benefits are reduced for early retirement.

2. States with general state employee retirement provisions (including teachers) and no incentives for early retirement

Arizona:

Arizona Revised Statutes Annotated Sections 38-741 et seq. (1987) provide for the general "State Retirement System" which includes teachers. Normal retirement occurs at age 62 with 10 years of service, age 65, or a sum of age and service equaling 85. Section 38-781.08 provides for early retirement with reduced benefits at age 50 with 5 years of service.

Colorado:

Colorado Revised Statutes Sections 24-51-200.5 et seq. (1986) establish the general "Public Employee Retirement System" which includes teachers. Local school districts may also create their own retirement fund under Section 22-64-101 which would co-exist with the state system. Normal retirement occurs in the state system at age 60 with 20 years of service or at age 55 with 30 years of service.

Hawaii:

Hawaii Revised Statutes Section 88-22 (1987) establishes the "Employees' Retirement System of the State of Hawaii," which includes teachers under Section 88-21. Normal retirement occurs at age 55 with 5 years of service or at any age with 25 years of service.

Iowa:

Iowa Code Annotated Section 97B.1 (1987) establishes the "Iowa Public Employees' Retirement System." Normal retirement occurs

at age 65 or at age 62 with 30 years of service. Section 97B.50 allows for early retirement at age 55 but with a reduction in benefits.

Maine:

Maine Revised Statutes Annotated Section 5:17601 (1987) provides for the inclusion of state employees and teachers in the "State Retirement System" as set out in Section 17001. Normal retirement occurs at age 60 with 10 years of service or at any age with 25 years of service. Section 5:17852 (c) provides for a reduction in benefits for retiring prior to age 55.

Massachusetts:

Annotated Laws of Massachusetts Section 32:1 (1987) establishes the "Contributory Retirement System for Public Employees" which includes teachers. Normal retirement occurs at age 65, and benefits are reduced for retiring earlier.

Mississippi:

Mississippi Code 1972 Annotated Section 25-11-101 (1987) establishes a "Public Employees' Retirement System" which includes public school teachers. Normal retirement occurs at age 60 with 4 years of service or at any age with 25 years of service.

Nevada:

Nevada Revised Statutes Annotated Section 286.110 (1987) establishes the "Public Employees' Retirement Act," while Section 286.510 provides for a reduction in benefits for early retirement (prior to age 55 with 30 years of service or 60 with 10 years of service).

New Hampshire:

New Hampshire Revised Statutes Annotated Section 100-A:35 (1986) merged the teachers' retirement system into what is now a general "New Hampshire Retirement System." Normal retirement is allowed at age 60. Section 100A:5 reduces benefits for early retirement between ages 50 and 60. After age 65, the state contribution to annuity benefits is reduced annually.

North Carolina:

General Statutes of North Carolina Sections 135-1 et seq. (1986) establish the "Teachers' and State Employees' Retirement System of North Carolina" with a normal retirement age of 60. Section 135-3 provides for early retirement at age 50 (with 20 years of service) with reduced benefits.

Rhode Island:

General Laws of Rhode Island 1956 Section 36-8-2 (1987) establishes the "Employees' Retirement Systems of the state of Rhode Island," and section 36-9-20 specifically includes teachers in the system. Normal retirement occurs at age 60 with 10 years of service or at any age with 30 years of service.

South Carolina:

Code of Laws of South Carolina 1976, Section 9-1-20 (1986) establishes the "South Carolina Retirement System" which includes teachers and provides reduced benefits for early retirement (prior to age 55).

South Dakota:

South Dakota Codified Laws Section 3-12-46 (1987) consolidated all state retirement systems, including the teacher retirement system, into the "South Dakota Retirement System." Section 3-12-106 reduces monthly payments for early retirement (prior to age 65 and after age 55).

Virginia:

Code of Virginia Sections 51-111.9 et seq. (1987) establish the "Virginia Supplemental Retirement Act," which includes public school teachers. Normal retirement age is 65 and early retirement is allowed at age 55 with 5 years of service. Section 51-111.55 reduces benefits for retiring early with under 30 years of service.

Wisconsin:

Wisconsin Statutes Section 40.20 (1987) creates the "Wisconsin Retirement System," which includes public school teachers. Normal retirement age is 65 regardless of years of service or age 62 with 30 years of service. Early retirement with reduced benefits is available after attainment of age 55.

Wyoming:

Wyoming Statutes Sections 9-3-401 et seq. (1987) establish the "Wyoming Retirement Act" which includes public school teachers. Normal retirement age is 60. Teachers under age 60 with at least 25 years of service may retire early with reduced benefits.

3. States offering early retirement incentives

A. Local option to implement state-structured ERIP

California:

Annotated California Education Code Section 22001 (1988) establishes the "State Teachers' Retirement System." Section 22726 provides for "encouragement of retirement" by allowing the addition of two years of service credit for teachers in districts which determine such a plan to be "in the best interests of the district." The plan is optional and must be initiated by the district.

Idaho:

Idaho Code Section 59-1301 (1987) provides for a "Public Employees' Retirement System," which includes teachers, while Section 59-1310(A) establishes a "Retirement Incentive Plan" for state employees. Normal retirement age is 65 with 5 years of service, and early retirement is allowed at age 55 with 5 years of service. The incentive is optional to the districts but must be set up according to state directives.

Minnesota:

Minnesota Statutes Section 125.611 (1988) provides specifically for a "Teacher Early Retirement Incentive Program" for teachers aged 55 to 65 with 30 years of service. The option to enter into an ERIP is left to the local district. Sections 354.045 et seq. establish the "Teachers Retirement Fund" of Minnesota.

Ohio:

Ohio Revised Code Annotated Sections 3309 et seq. (1986) establish the "Public School Employees' Retirement System." Normal retirement age is 60 with 5 years of service or any age with 30 years of service. Section 3309.34 allows early retirement with reduced benefits at age 55 with 25 years of service. Section 3309.33 provides for a "retirement incentive plan" which is optional to local districts. Employers may purchase service credit for teachers over age 50 if they so desire.

Kansas:

Kansas Statutes Annotated Section 72-1726 et seq. (1986) provide for the creation of local public school teacher retirement funds at the option of the local boards of education; normal retirement is after 30 years of service. Kansas teachers may belong to a local system or to the "State School Retirement System of Kansas" created by Sections 72-5501 et seq. This decision is made by a 51% vote of the local bargaining unit. In addition, districts may choose to supplement membership in the state system with a local fund. Section 72-5518 reduces benefits for early

retirement (prior to age 65) in the state system. Section 72-5395 provides for optional early retirement incentive plans which can be implemented at the local level to offset the reduction of benefits imposed by section 72-5518.

B. Statewide ERIP provisions

Michigan:

Michigan Compiled Laws Section 38.1301 (1987) establishes the "Michigan Public School Employees Retirement System," and Section 38.1381(a) allows for early retirement without a reduction in benefits for an employee with a combined age and length of service of 80 years.

New Jersey:

New Jersey Statutes Annotated Section 18A:66-1 (1987) establishes the "Teachers' Pension and Annuity Fund Law" with a normal retirement age of 60. Section 18A:66-37 allows early retirement after 25 years of service but reduces benefits for every year under age 55.

Pennsylvania:

Pennsylvania Statutes Annotated Section 24 Pa.C.S.A. 8101 (1987) establishes the "Public School Employees' Retirement Code." Normal retirement occurs at age 62 or with 35 years of service. Retiring prior to normal age of service credit results in a reduction of benefits. The Pennsylvania legislature set up a special statewide early retirement incentive option in 1986 (§ 8312) allowing for early retirement at 30 years of service without a reduction in benefits. The express legislative intent was to "assist school districts by providing cost saving opportunities to school districts and reduce the need for school districts to furlough public school employees" during a period of reduced student population.

Tennessee:

Tennessee Code Annotated Section 49-5-901 (1987) allows any local school district to establish its own "Public School Teachers' Retirement Fund." This fund would be separate from the state system and participation in such a local fund would preclude participation in the state system. Section 8-34-201 (1987) establishes the "Tennessee Consolidated Retirement System," superseding an earlier state teacher retirement system. Under Section 8-36-201 normal retirement age is 60 or any age with 30 years of service. Section 8-36-119 provides for a "retirement incentive plan" open to teachers age 60 with 10 years of service, age 55 with 25 years of service, or any age with 30 years of service. The incentive is in the form of a $2000 lump sum plus longevity pay. The incentive is open to all teachers in the state plan for the 1987-88 school year.

Utah:

Utah Code Annotated Section 49-3-201 (1987) creates the "Public Employees' Noncontributory Retirement Act" with benefit contributions made solely by the employer. Teachers are included under this Act, which replaces the "Public Employees' Retirement System" (Section 49-2-201). Under Section 49-3-401, normal retirement age is 65 with 4 years of service, 62 with 10 years of service, 60 with 20 years of service, or any age with 30 years of service. Under Section 49-3-402, benefits are reduced for early retirement (allowed prior to age 65 after 25 years of service); however, no reduction occurs after 30 years of service regardless of age. Utah Code Section 49-3-802 provided an "Early Retirement Incentive" for 1987 only for purposes of reducing the 1987-88 budget. The incentive became available on March 18, 1987 for members who: (1) met at least the requirement of 25 years of service credit, (2) elected to forfeit any stipend for retirement offered by the local district, and (3) retired by a set date (May 31, 1987 for the 1986-87 school year). The statewide retirement incentive consisted of a lump sum payment of 2% of final average salary plus a recision of the normal reduction in benefits for early retirement. The incentive was funded in 1987-88 by a supplemental appropriation from the 1988 General Session. The excess savings derived from the incentive plan were to be reported to the legislature for appropriation to either the State Office of Education or the local districts.

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